

1 testimony in this case you testified that  
2 foreclosure by the Mom and Pop MVPDs that  
3 weren't carrying MASN was too small a matter.  
4 Do you remember that?

5 A It could be too small a matter,  
6 yes.

7 Q And we went through in that  
8 deposition a whole long list of smaller MVPDs  
9 that don't carry MASN. Do you remember that?

10 A The Mom and Pops, yes.

11 Q Correct. Among those Mom and Pops  
12 were companies like Blue Ridge Cable and  
13 Suddenlink. Do you remember that?

14 A Sure.

15 Q And those cable companies have  
16 [REDACTED] in the MASN footprint, don't they?

17 A They might within the MASN  
18 footprint, but in a given DMA from my  
19 recollection it's a lot smaller.

20 Q Let's go back to Com 85 please.

21 JUDGE SIPPEL: Com 85 the exhibit.

22 MR. BURKE: That's correct and I

1 would like to direct Dr. Singer to --

2 THE WITNESS: I'm sorry. I don't  
3 know which one is Com 85. I'm sorry.

4 BY MR. BURKE:

5 Q It's the cover email from Mark  
6 Wyche to John Angelos. It has a sticker on  
7 the upper right called Com 85.

8 A Right. I found it.

9 Q I would like to direct you to page  
10 85-16.

11 A Okay. I'm there.

12 Q Okay. So the top of this is  
13 labeled "Unlaunched subscribers by MVPD in  
14 Region 4 excluding Comcast." Do you see that?

15 A Yes.

16 Q Okay. And Region 4 is the area  
17 where the disputed Comcast systems are, right?

18 A It's larger than the area. Right.  
19 The contested areas are a subset of Region 4.

20 Q Right. They're located within  
21 Region 4, the contested areas, right?

22 A Correct.

1 Q Okay. Now if you look, the second  
2 entry there is Blue Ridge Cable. Do you see  
3 that? The second cable company entry?

4 A I see that.

5 Q Okay, and if you look at it, they  
6 list two different systems, the Ephrata System  
7 and the Duncannon System. Do you see those?

8 A I do.

9 Q And one has about [REDACTED] expanded  
10 basic subscribers and one has about [REDACTED]  
11 expanded basic subscribers. Do you see that?

12 A I see that.

13 Q So for a total of about [REDACTED]  
14 expanded basic subscribers on the Blue Ridge  
15 system. Is that right?

16 A Correct.

17 Q And Blue Ridge is not carrying  
18 MASN.

19 A That sounds right. I would have  
20 to consult that table, but I think that's  
21 right.

22 Q I mean this table is headed

1 "Unlaunched subscribers by MVPD Region 4."

2 Right?

3 A Right, but I guess what it doesn't  
4 tell me is whether or not Blue Ridge is  
5 carrying MASN in any other area, but in this  
6 area.

7 Q Okay. In this area, Blue Ridge is  
8 not carrying MASN, right?

9 A Correct.

10 Q And this [REDACTED] is in a single  
11 DMA, right?

12 A It appears to be, yes.

13 Q Okay. So now you testified in  
14 your deposition that Blue Ridge was too small  
15 a matter. Do you recall that?

16 A I don't recall that specifically.  
17 It's possible, but what I recall saying is  
18 that Mom and Pops may not be able to move the  
19 needle significantly.

20 Q So is [REDACTED] -- Sitting here  
21 today, would you agree [REDACTED] subs is too  
22 small to matter?

1           A       I'd have to see what that -- how  
2   that compares to the total unserved and what  
3   other operators are serving that area. But  
4   [REDACTED] on the face of it in this market seems  
5   like it's a significant number.

6           Q       So it is -- Now you're withdrawing  
7   your deposition testimony where you said it  
8   was too small to matter.

9           A       I don't recall if I said [REDACTED]  
10   Ridge is [REDACTED] -- If someone would have shown  
11   me a number that said [REDACTED] I don't think I  
12   would have said that's too small to matter.  
13   If someone would have said in general do the  
14   Mom and Pops move the needle as much as  
15   Comcast I would have said no.

16          Q       Let's go to your deposition  
17   testimony if you have it, Dr. Singer.

18                   (Off the record discussion.)

19                  MR. BURKE: May I approach the  
20   witness, Your Honor?

21                  JUDGE SIPPEL: Yes, you may. Can  
22   we have the same excerpts from the other day?

1 Is that -- Or is that a different witness?

2 MR. BURKE: I think it's  
3 different, Your Honor.

4 (Off the record comment.)

5 JUDGE SIPPEL: That's right. Mr.  
6 Gluck. Yes, we did with Mr. Gluck. Okay.  
7 This is different and this is marked as  
8 Comcast Exhibit 130. That's for  
9 identification. This is not in the record.  
10 Correct?

11 (Whereupon, the document referred  
12 to was marked as Comcast Exhibit  
13 No. 130 for identification.)

14 MR. BURKE: That's correct and  
15 we're not planning to move it I think.

16 JUDGE SIPPEL: All right. We'll  
17 see what happens.

18 BY MR. BURKE:

19 Q But can you identify this  
20 document, Dr. Singer?

21 A Yes, this is my deposition.

22 Q I'd like to direct your attention

1 to -- We'll begin on page 210 of your  
 2 deposition and if you go to line 12. The  
 3 question reads "For each of the following,  
 4 Blue Ridge, Blue Ridge Cable, Nittany Media,  
 5 SuddenLink, JetBroadband" and then you  
 6 interrupt and say, "I knew this case was going  
 7 to come down to JetBroadband" and the question  
 8 continues "Chatmoss, CableVision, Citizens  
 9 Cablevision, Nelson County Cablevision, Scott  
 10 Telecon & Electronics, Gearheart  
 11 Communication, Intermountain Cable and  
 12 Zampelli Electronics, do you know if MASN was  
 13 carried on those entities?" And your answer  
 14 was "Yes, I do now."

15 And the question followed "And is  
 16 this carried by each of those entities?" And  
 17 your answer is "It sounds like you read off  
 18 the Mom and Pops who do not carry and I want  
 19 to give those voices some weight." And you  
 20 can read the rest of it I think. I'm not  
 21 trying to short-circuit it, but I want to then  
 22 carry on to page 212. On line five, the

1 question is "Does their refusal to carry MASN  
2 have any competitive effect?" And your answer  
3 is "No, for two reasons. One, they're too  
4 small to matter and, two, they're not  
5 vertically integrated into content." Do you  
6 see that?

7 A And just finish the last line  
8 which is important. "So their refusal cannot  
9 be motivated by an anti-competitive objective  
10 to profit up their affiliated network."

11 Q Okay. Fine. Is there anything  
12 else that you want to read from this?

13 A Well, you skipped some stuff. But  
14 you can go ahead with the question. I stand  
15 by everything that I said.

16 Q And you stand by your testimony  
17 that this long list of cable providers is too  
18 small to matter.

19 A I think individually, yes.  
20 Collectively, if they all came forward and  
21 carry MASN, they could move the needle. I'd  
22 point out that you're excited about the [REDACTED]



1 in Zone 4 of probably the largest the Mom and  
2 Pop. But I would just point Your Honor's  
3 attention to the fact that Comcast has [REDACTED]  
4 in Zone 4. So relative to that [REDACTED] which  
5 one is going to move the needle. The [REDACTED]  
6 is. Okay, [REDACTED] is small by anyone's  
7 standard relative to [REDACTED] subs. And that's  
8 what I said in the deposition. That's what  
9 I'm saying here.

10 Q Now nowhere in your testimony in  
11 your deposition have you drawn the line or  
12 given a metric for when foreclosure becomes  
13 significant enough to matter, have you?

14 A I don't think that I've given a  
15 critical level, no.

16 Q And you haven't offer any formula  
17 or economic framework to calculate when the  
18 level of foreclosure becomes critical, have  
19 you?

20 A Well, actually it depends on  
21 critical for what purpose. I think I did give  
22 a framework for when foreclosure is large

1 enough to generate harm that rebounds to  
2 consumers. But if you're asking me for a  
3 number such that I can say if Comcast were to  
4 shrink this thing down from [REDACTED]  
5 [REDACTED] would it still be critical, I have no  
6 offered testimony on where that crossover  
7 point occurs.

8 Q And it actually already is [REDACTED]  
9 [REDACTED] of total subs, isn't it?

10 A That's another way to say it, yes.

11 Q So you can't, sitting here today,  
12 tell us what the tipping point is between an  
13 insignificant level of foreclosure and a  
14 significant level of foreclosure.

15 A I don't know if I can express it  
16 in percentage terms. But I can't help from  
17 being influenced from conversations with Mr.  
18 Cuddihy when he says big advertising clients  
19 like [REDACTED] and [REDACTED] and big  
20 programmers like the Washington Redskins and  
21 the Baltimore Ravens are citing these gaps in  
22 the coverage for reasons why they don't want

1 to do business with us.

2 If the foreclosure share was  
3 smaller, just hypothetically speaking, suppose  
4 that Comcast only shut down in [REDACTED] of  
5 its markets. I don't know if we'd even be  
6 here today. I don't know if those anecdotes  
7 would be present. Would the Redskins have  
8 walked away from MASN over [REDACTED]? I  
9 don't know.

10 But what we do know is that we're  
11 here today and we have the evidence that this  
12 foreclosure has impaired MASN's ability to  
13 compete. While I'm not prepared to tell you  
14 what the bottom line cutoff is, it appears  
15 that bad things are happening at [REDACTED].

16 Q So the fact that MASN is willing  
17 to litigate with Comcast, that's the proof  
18 that this is significant enough for closure.

19 MR. KIM: Objection.

20 THE WITNESS: No, that wasn't my  
21 testimony.

22 JUDGE SIPPEL: Wait.

1 MR. BURKE: At least that --

2 JUDGE SIPPEL: Can you agree with  
3 that statement?

4 THE WITNESS: Yes. In other  
5 words, could MASN -- I think the premise is  
6 could MASN be here for not having a  
7 meritorious claim? I mean it's conceivable.  
8 Sure. Not in this case, but it's conceivable.

9 JUDGE SIPPEL: I'm sorry, Mr. Kim.  
10 I never got the basis of your objection.

11 MR. KIM: Yes, directly to his --  
12 The objection was because MASN was willing to  
13 litigate. That's why we're here. There's no  
14 foundation this witness has any idea why MASN  
15 is willing to litigate. It's an improper  
16 question.

17 MR. BURKE: I think the witness  
18 brought it up himself.

19 JUDGE SIPPEL: Well, I'm allowing  
20 the question, but that's a good thing. I mean  
21 it's a good objection.

22 MR. KIM: Thank you, Your Honor.

1 BY MR. BURKE:

2 Q You brought up advertising. So  
3 let's turn to that for a moment. I think you  
4 testified earlier that you've not quantified  
5 how much advertising MASN has lost as a  
6 consequence of not having these [REDACTED] subs,  
7 right?

8 A That's correct. I have not been  
9 asked to calculate damages in the sense that  
10 you might --

11 JUDGE SIPPEL: That's all right.  
12 You answered the question.

13 THE WITNESS: Yes. I'm sorry. I  
14 have not.

15 JUDGE SIPPEL: -- to testify to  
16 that.

17 BY MR. BURKE:

18 Q And isn't it true that MASN's  
19 advertising is booming?

20 A It may be, but the point is is it  
21 different than it would be in a but-for world?

22 Q So have you heard that MASN's

1 advertising --

2 JUDGE SIPPEL: What kind of an  
3 answer is that?

4 THE WITNESS: Look. Your Honor,  
5 the tactic here is obviously to show that MASN  
6 is making profits and I don't deny that they  
7 are. But the question is what would their  
8 profits be, what would the revenues be, in the  
9 but-for world, economists use that term a lot  
10 in which Comcast was not engaging in a  
11 challenge conduct.

12 So he can show me that they're  
13 making profits. He can show that they're  
14 selling ads. That's great. The question is  
15 would they be selling even more ads or would  
16 they be able to charge even more money for ads  
17 but for the conduct. I just want everyone's  
18 attention to be on that more important  
19 question, but I'm going to try to answer the  
20 question as you ask me as well.

21 JUDGE SIPPEL: Well, let's get  
22 back to something more basic. Is the

1 litigation about an improvement of a positive  
2 balance sheet or a profit and loss statement?  
3 Is that what the suit is all about? Or is it  
4 about harm to consumers? What the dickens are  
5 you talking about here?

6 THE WITNESS: I think what it's  
7 about for the statute and we discussed this a  
8 little bit yesterday is is MASN impaired in  
9 its ability to compete fairly vis ... vis  
10 Comcast's affiliated network in the contested  
11 areas and in particular, but in MASN's  
12 territory generally and by that standard.

13 And we've gone through examples of  
14 how they've been impaired in their ability to  
15 compete with programming. How they're  
16 impaired in their ability to compete for  
17 advertisers. And in the future when they lose  
18 out on this valuable programming then they're  
19 going to be impaired in their ability to  
20 compete for MVPDs.

21 BY MR. BURKE:

22 Q So to get back to my question

1    which was are you aware that MASN's  
2    advertising revenues are booming.

3           A       Yes. Well, no, I'm not aware.

4    But if you told me that they were booming it  
5    wouldn't change my opinion on impairment.

6           Q       So as part of your analysis you  
7    didn't actually analyze how well MASN is doing  
8    as an advertiser.

9           A       What an economist -- The answer is  
10   no. But when an economist --

11          Q       That's the answer then. No.

12                 JUDGE SIPPEL: That's the answer  
13   he wants.

14                 MR. BURKE: I would like to  
15   approach the witness, Your Honor.

16                 JUDGE SIPPEL: There will be  
17   redirect I'm sure on this.

18                 MR. BURKE: May I approach the  
19   witness, Your Honor?

20                 JUDGE SIPPEL: Please do. Yes,  
21   sir.

22                 MR. BURKE: This is Comcast



1 Exhibit 142 marked for cross. We're not  
2 offering this into evidence at this point.

3 (Whereupon, the document referred  
4 to was marked as Comcast Exhibit  
5 No. 142 for identification.)

6 But I will note that this is a  
7 printout from West Law which is a newspaper  
8 article that we have no reason to doubt the  
9 authenticity of.

10 BY MR. BURKE:

11 Q I'd like to direct your attention  
12 -- By the way, this is an article dated  
13 September 26, 2008 from the Baltimore Sun and  
14 it's entitled "As Fourth Season Closes MASN's  
15 Balancing Act Carries On" and I'd like to  
16 direct your attention, Dr. Singer, to page two  
17 of this document and the third paragraph. Can  
18 you read this paragraph, Dr. Singer?

19 A The third paragraph.

20 Q Yes.

21 A Is it the paragraph that begins  
22 "But today"?

1 Q That's right.

2 A Okay. "But today MASN says it's  
3 available in 5.2 million households from  
4 Harrisburg, Pennsylvania to Charlotte, North  
5 Carolina. It says it has doubled its  
6 advertising from 2007 and recently opened a  
7 Silver Springs sales office. 'MASN is fully  
8 intertwined in sports fabric of Washington and  
9 Baltimore,' spokesman Bob Webster said."

10 Q Very dramatic.

11 (Laughter.)

12 A You said that I was passionate.

13 Q So, Dr. Singer, did you know that  
14 MASN's advertising revenues had doubled  
15 between 2007 and 2008?

16 A I was not aware of that and it  
17 wouldn't change my opinion on whether or not  
18 impairment has occurred.

19 Q I'm sure it wouldn't. Is there --  
20 That never came up in your decisions with Mr.  
21 Cuddihy for example.

22 A No, it did not.

1           Q       So Mr. Cuddihy never thought to  
2   inform you that MASN's advertising revenues  
3   had doubled during a year when the economy  
4   generally was in recession.

5                   MR. KIM:  Objection.  How can this  
6   witness testify as to what Mr. Cuddihy never  
7   thought to do?

8                   JUDGE SIPPEL:  I'll sustain the  
9   objection.

10                  BY MR. BURKE:

11           Q       Mr. Cuddihy never told you in  
12   those conversations that MASN had managed to  
13   double its advertising revenue during a year  
14   when the overall economy was in recession.

15           A       Yes, he didn't do that.

16                  JUDGE SIPPEL:  Wait.  Wait a  
17   minute.  There's too much in that question.  
18   Why don't you just start with the one about  
19   doubling the revenue and leave it at that and  
20   then build from there.

21                  MR. BURKE:  Fine.

22                  BY MR. BURKE:

1 Q Mr. Cuddihy never told you that  
2 MASN had doubled its advertising revenues from  
3 2007 to 2008.

4 A I don't recall him saying that.

5 Q And you never thought to ask him  
6 anything about that either.

7 A No, because an economist doesn't  
8 think that way. We're trying to do something  
9 different. If you're interested I can  
10 explain, but I can leave it at that.

11 Q Now you mentioned two anecdotes  
12 that Mr. Cuddihy told concerning potential  
13 lost advertising revenues, right?

14 A Yes, and not just Mr. Cuddihy.  
15 Mr. McGuinness. I had separate interviews  
16 with Mr. McGuinness as well.

17 Q And those two anecdotes, one  
18 involved [REDACTED] and one involved [REDACTED],  
19 right?

20 A Correct.

21 Q And you --

22 JUDGE SIPPEL: Let's find out who

1 Mr. McGuinness is.

2 THE WITNESS: I'm not sure of his  
3 official title, but I know that he serves in  
4 some capacity as selling advertisements for  
5 MASN.

6 BY MR. BURKE:

7 Q And you've made no effort to  
8 determine how much dollar value was lost as a  
9 consequence of those two anecdotes, have you?

10 A No. Actually, it's possible that  
11 the amount of the rebate that [REDACTED] is now  
12 insisting upon was mentioned to me and I just  
13 can't recall it off the top of my head. With  
14 respect to [REDACTED], I think that -- Well,  
15 my impression was that the entire account was  
16 in jeopardy if it hasn't already been lost.  
17 And I don't know the value associated with  
18 that account.

19 Q So for the two anecdotes sitting  
20 here today you can't put any dollar value on  
21 them at all.

22 A I can't. I just cannot recall the

1    rebate that [REDACTED] is insisting on just on my  
2    memory. But I would say that would be a  
3    starting point and then the question is what's  
4    the value of the account. The purpose of the  
5    anecdotes just to --

6           Q       Can you just answer the question,  
7    Dr. Singer? I didn't ask the purpose of the  
8    anecdotes.

9           A       Sorry. Did I answer it?

10           JUDGE SIPPPEL: Yes. You're okay.

11           THE WITNESS: Sorry about that.

12           JUDGE SIPPPEL: Sit tight.

13           BY MR. BURKE:

14           Q       Okay. I'd like to change gears  
15    for a second, Dr. Singer, and talk a little  
16    bit about similarly situated. It's your  
17    opinion that CNS Philadelphia is similarly  
18    situated to MASN in the disputed areas. Is  
19    that right?

20           A       Absolutely -- Well, not in all the  
21    disputed areas. You said CNS Philadelphia.  
22    I think you're -- I don't know if you're being

1     tricky, but CSN Philadelphia in Harrisburg is  
2     similarly situated.

3             Q       I wasn't intending to be tricky.

4             A       Okay.

5             Q       In the disputed areas in the  
6     Harrisburg DMA, it's your testimony that CSN  
7     Philadelphia is similarly situated to MASN,  
8     right?

9             A       Yes.

10            Q       Okay. Now you were unable in your  
11     deposition to identify any instance where CSN  
12     Philadelphia had competed with MASN for sports  
13     programming, right?

14            A       Right. I went back through the  
15     deposition last night and I think that I've  
16     incorrectly put the Ravens into the CSNMA camp  
17     and upon further conversations I now  
18     understand that the Ravens are upset that  
19     they're not being carried in Harrisburg. So  
20     I may have inadvertently said that the  
21     competition for the Ravens was between CSNMA  
22     and MASN whereas it could be actually between

1 CSN Philly and MASN.

2 Q Let's get back to the question.

3 You were unable to identify any instance where  
4 CSN Philadelphia competed for sports right  
5 with MASN. Isn't that right?

6 A During my deposition I could not  
7 recall one. That's correct.

8 Q And sitting here today, you don't  
9 have any evidence to suggest that CSN  
10 Philadelphia competed for Ravens' right, do  
11 you?

12 A What we heard Mr. Cuddihy say in  
13 his testimony was that the Ravens were  
14 complaining about coverage gaps in Harrisburg  
15 because Harrisburg is their territory. So it  
16 might have been of that testimony that I heard  
17 today. When I went back and read my  
18 deposition last night, I think that I had  
19 assumed that CSNMA would be competing for the  
20 Ravens where it may be CSN Philadelphia  
21 competing for the Ravens. At the end of the  
22 day, CSN family is competing for the Ravens.



1           Q       As an empirical matter, do you  
2 know who was in the competition for the  
3 Ravens' right when those rights were up?

4           A       I'm not sure if it was CSNMA or  
5 CSN Philly.

6           Q       Sitting here today, you have no  
7 idea.

8           A       I'm not for sure today, but based  
9 on testimony that I heard yesterday given that  
10 the Ravens have expressed frustration about  
11 MASN coverage in Harrisburg that perhaps CSN  
12 Philly was the more relevant entity of CSN.

13          Q       Let me get this straight, Dr.  
14 Singer. You think that it's more likely that  
15 a Philadelphia based MSN could build for  
16 Baltimore Ravens' rights than one that's based  
17 in Baltimore and Washington.

18          A       That's what I did during my  
19 deposition. I thought when asked which of the  
20 two is going after the Ravens. I thought MA.  
21 But upon hearing the testimony yesterday, it  
22 seems to me that it would be logical based on